

States Trending Toward Point-of-Sale Collection of E911 Taxes and Fees on Prepaid

In the past, states have adopted an uncoordinated approach to collecting E911 fees from prepaid wireless customers. As a result, compliance for national prepaid wireless providers and their third party retailers is burdensome and inconsistent.

- Some states provide optional methodologies that require prepaid wireless service providers to either:
 - "eat" the tax based on estimated monthly revenues per customer ("ARPU method");
 - collect the tax from customers at the point of sale without specifying how; or
 - "decrement" (deduct) minutes from prepaid wireless customer accounts that have a sufficient positive balance at a specified time of the month.
- Approximately half the states do not impose 911 fees on prepaid services at all.
- In the remaining states, the law is sometimes unclear as to whether the fee applies to prepaid services.

The end result of the current hodgepodge of state laws is expensive litigation, a lack of transparency to consumers, and an administratively burdensome system.

Recognizing that the current system was not functioning well or sustainable, the wireless industry reached out in 2009 to legislators, retailers and public safety representatives to develop a national model to collect E911 fees directly from prepaid wireless consumers. These efforts resulted in the endorsement by the National Conference of State Legislatures (NCSL) Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce of model legislation requiring E911 fees to be collected on prepaid wireless services at the retail point-of-sale. Key elements of the model legislation include:

<u>Imposition at Retail Point-of-Sale</u> – The fee is collected at the point of sale by the retailer when the service is sold to the customer.

<u>Piggybacking on Existing Sales Tax Collection Processes</u> – Retailers use the existing processes and rules governing the collection of sales taxes on prepaid service.

<u>Determination of Amount</u> – States determine whether to impose a flat E911 fee per each retail transaction or a percentage-based fee assessed on the amount of the purchase.

<u>Vendor Compensation</u> – The retailer retains three percent (3%) of the prepaid wireless E911 charges collected from prepaid consumers to offset administrative costs.

<u>Exclusion of E911 Charges from the Base of Other Taxes and Fees</u> – Similar to postpaid services, the sales tax does not apply to the prepaid E911 fee.

Customers who purchase prepaid wireless services will have the wireless E911 fee added to their purchase and will pay it to the seller at the point-of-sale, just as they pay sales and use taxes to the seller today. In fact, most retailers will be able to program the E911 fee into their point-of-sale system so that the fee will be automatically added to the customer's receipt. Fees collected will be remitted to the state revenue agency in the same manner and on the same return as the sales and use tax, so there will no



additional forms or filing responsibilities imposed upon retailers other than identifying the amount of the E911 fee collected.

The benefits to the states and public safety from adopting the Point-of-Sale Methodology

- Certain, stable, and predictable E911 revenues from prepaid wireless customers.
- An end to disputes and litigation over application of E911 fees to prepaid wireless services.
- A fair and equitable system for collecting E911 fees from all prepaid wireless consumers.
- Transparency all customers will know they are paying an E911 fee to support emergency communication services.

As a result of this collaborative process and the model NCSL bill as a foundation, 911 Point-of-Sale legislation has been enacted in 17 states, the District of Columbia and the Virgin Islands as of August 30, 2011.

• Colorado, the District of Columbia, Georgia, Indiana, Illinois, Kansas, Louisiana, Maine, Mississippi, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia and the Virgin Islands

STATES WITH PREPAID POINT-OF SALE LAWS